



# Serious Crime Act 2015

## 2015 CHAPTER 9

### PART 5

#### PROTECTION OF CHILDREN AND OTHERS

##### *Female genital mutilation*

#### **71 Anonymity for victims of female genital mutilation**

(1) After section 4 of the Female Genital Mutilation Act 2003 insert—

##### **“4A Anonymity of victims**

Schedule 1 provides for the anonymity of persons against whom a female genital mutilation offence (as defined in that Schedule) is alleged to have been committed.”

(2) Insert as Schedule 1 to that Act the following Schedule—

##### “SCHEDULE 1

##### ANONYMITY OF VICTIMS

#### **Prohibition on the identification of victims in publications**

- 1 (1) This paragraph applies where an allegation has been made that a female genital mutilation offence has been committed against a person.
- (2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person’s lifetime.
- (3) For the purposes of this Schedule, any consent of the person to an act giving rise to the alleged offence is not to be taken as preventing that

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person from being regarded as a person against whom the alleged offence was committed.

- (4) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all in England and Wales and Northern Ireland, or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.
- (5) The first condition is that the conduct of a person’s defence at a trial of a female genital mutilation offence would be substantially prejudiced if the direction was not given.
- (6) The second condition is that—
- (a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
  - (b) it is in the public interest to remove or relax the restriction.
- (7) A direction under sub-paragraph (4) does not affect the operation of sub-paragraph (2) at any time before the direction is given.
- (8) In this paragraph “the court” means—
- (a) in England and Wales, a magistrates’ court or the Crown Court;
  - (b) in Northern Ireland, a magistrates’ court, a county court or the Crown Court.

**Penalty for breaching prohibition imposed by paragraph 1(2)**

- 2 (1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (3) The persons responsible for a publication are as follows—

<i>Type of publication</i>	<i>Persons responsible</i>
Newspaper or other periodical	Any person who is a proprietor, editor or publisher of the newspaper or periodical.
Relevant programme	Any person who— <ol style="list-style-type: none"> <li>(a) is a body corporate engaged in providing the programme service in which the programme is included, or</li> <li>(b) has functions in relation to the programme corresponding to those of an editor of a newspaper.</li> </ol>
Any other kind of publication	Any person who publishes the publication.

- (4) If an offence under this paragraph is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a senior officer of a body corporate, or
  - (b) a person purporting to act in such a capacity,
- the senior officer or person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) “Senior officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (6) Proceedings for an offence under this paragraph—
- (a) if alleged to have been committed in England and Wales, may not be instituted except by, or with the consent of, the Attorney General;
  - (b) if alleged to have been committed in Northern Ireland, may not be instituted except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

### **Offence under paragraph 2: defences**

- 3
- (1) This paragraph applies where a person (“the defendant”) is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication.
- (2) It is a defence for the defendant to prove that at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that—
- (a) the publication included the matter in question, or
  - (b) the allegation in question had been made.
- (3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description.
- (4) The defence in sub-paragraph (3) is not available if—
- (a) the victim was under the age of 16 at the time when her consent was given, or
  - (b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining her consent.
- (5) In this paragraph “the victim” means the person against whom the female genital mutilation offence in question is alleged to have been committed.

### **Special rules for providers of information society services**

- 4
- (1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in England and Wales or Northern Ireland).

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- (2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in England and Wales or Northern Ireland.
- (3) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8.
- 5 (1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
- (a) is necessary for the purposes of the public interest objective,
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
  - (c) is proportionate to that objective.
- (3) “The public interest objective” means the pursuit of public policy.
- 6 (1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1)—
- (a) providing access to a communication network, and
  - (b) transmitting information in a communication network,
- include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.
- 7 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information—
- (a) is automatic, intermediate and temporary, and
  - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
- (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.

- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.
- 8 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if—
- (a) the service provider had no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or
  - (b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

### Interpretation

- 9 (1) In this Schedule—
- “domestic service provider” means a service provider established in England and Wales or Northern Ireland;
- “the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);
- “female genital mutilation offence” means—
- (a) an offence under section 1, 2, 3 or 3A;
  - (b) an offence of attempt or conspiracy to commit any such offence;
  - (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to any such offence;
- “information society services”—
- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
  - (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

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“non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;

“programme service” has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);

“prohibited material” means any material the publication of which contravenes paragraph 1(2);

“publication” includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;

“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“relevant programme” means a programme included in a programme service;

“service provider” means a person providing an information society service.

- (2) For the purposes of the definition of “publication” in sub-paragraph (1)—
- (a) an indictment or other document prepared for use in particular legal proceedings is not to be taken as coming within the definition;
  - (b) every relevant programme is to be taken as addressed to the public at large or to a section of the public.
- (3) For the purposes of the definitions of “domestic service provider” and “non-UK service provider” in sub-paragraph (1)—
- (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—
    - (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
    - (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;
  - (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
  - (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.”